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- Amended*
- 6 surface of said body, wherein said pesticide is a member selected from the group
7 consisting of a nitromethylene and a phenyl pyrazole; and wherein said external surface
8 of said body provides one or more edges for insects to land on or near said pesticide.
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REMARKS

At the outset, Applicant and his representative wish to thank Examiner Rowan for the telephonic interview held on May 21, 2002. During this interview, a number of issues were clarified, which has helped Applicant to more fully address the concerns of the Examiner. Applicant thanks Examiner Rowan for his time and the courtesy of extending the interview.

Claims 1-4, 7-10 and 12-35 are pending in this application and are presented for examination. Claim 35 is newly added and finds support in the claims as filed. No new matter has been introduced with the foregoing new claim. All claims are set forth in the Appendix for the Examiner's convenience. Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made." Reconsideration is respectfully requested.

I. THE INVENTION

The present invention provides an insect bait station that maximizes the number of edges that an insect such as a fly, can rest, due to the fact that a curved surface, by definition, is composed by an infinite number of edges. Flies are attracted to a surface's edge and to baits that give off odors. The present invention relates to an insect trap for attracting and trapping an insect such as a fly, wherein the trap comprises a body having an external longitudinal groove for supporting a pesticide. The pesticide is held in the external groove.

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II. FIRST REJECTION UNDER 35 U.S.C. § 103(a)

Claims 1, 12, 26-27, 31, 33-34 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 1,286,763 ("Pfeiffer"). The Examiner alleges that Pfeiffer shows an insect bait station for attracting and killing flies. The Examiner alleges that inherently there is a longitudinal groove, but overall the groove is more horizontal. In response, Applicant respectfully traverses the rejection.

As discussed previously, Pfeiffer teaches "steps" with "troughs". As is clearly shown in Figures 6, 7 and 12 of Pfeiffer, the troughs (15) are similar to rain gutters that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the "troughs" where the ledges retain the insecticides. (col 2, lines 87-96).

Moreover, the Pfeiffer design involves the pouring of a liquid onto a station with horizontal troughs. Therefore, the station must provide for channels or ledges to accommodate the liquid. Pfeiffer requires preparation *i.e.*, the pouring of the insecticide onto the cone, prior to deployment and use.

In stark contrast, the present invention provides a longitudinal external groove that is not a trough with a ledge. The external groove is a longitudinal groove that is able to support the insecticide because the insecticide is self-adhering. The pesticide sticks to the body due to its self-adhering nature.

Advantageously, the present invention can be used directly from the package without the application of baits or other insecticidal products. Further, unlike Pfeiffer, in the present invention, an un-baited part of the present device comes into contact with the handler, while, for example, being placed at the site to be treated. The present invention minimizes human contact while handling, and at the same time, presents baited landing surfaces to the fly from all directions.

As there is no suggestion of an longitudinal groove in Pfeiffer, a self-adhering pesticide, or minimization of human contact while handling, there is no suggestion of the present invention. As such, the present invention is unobvious over

Pfeiffer. Therefore, Applicant respectfully requests that the Examiner withdraw the obviousness rejection.

III. SECOND REJECTION UNDER 35 U.S.C. 103(a)

Claims 2-4, 7-10, 13-25, 28-30 and 32 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Pfeiffer, and further in view of U.S. Patent No. 4,671,010 ("Conlee"). In response, Applicant respectfully traverses the rejection.

As discussed previously, the "grooves" of Pfeiffer are really "steps" with "troughs". As is clearly shown in Figures 6, 7 and 12 of Pfeiffer, the troughs (15) are similar to rain gutters that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the "troughs" with ledges retain insecticide. (col 2, lines 87-96). There is no teaching or suggestion of a longitudinal groove to support a pesticide that is self-adhering.

The secondary reference of Conlee does not supply the teaching that is clearly lacking in Pfeiffer. Even if the body of Conlee were combined with the teaching of Pfeiffer, a skilled person would not arrive at the present invention, because the present invention teaches "a longitudinal groove", whereas Pfeiffer teaches steps with troughs similar to a rain gutter.

Thus, there is no incentive to combine the prior art references. As obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so, a *prima facie* obviousness rejection is untenable. As such, Applicant respectfully requests that the Examiner withdraw the rejection.

There is no reasonable expectation that the modification that the Examiner contemplates will succeed. Pfeiffer teaches "steps" with "troughs" that are similar to rain gutters that "hold" the insecticide. In Pfeiffer, the insecticide material is poured down the apex and the "troughs" with ledges retain the insecticides. Pfeiffer does not teach or suggest the use of a longitudinal groove that is able to support a self-adhering insecticide.

Thus, the Examiner has used hindsight reconstruction of the cited art in an attempt to piece together the present invention. Hindsight reconstruction is impermissible and therefore, Applicant respectfully request that the Examiner withdraw the rejection.

IV. OBJECTIVE EVIDENCE REBUTS ANY *PRIMA FACIE* CASE OF OBVIOUSNESS

Applicants can rebut a *prima facie* case of obviousness by presenting comparative test data showing that the claimed invention possesses unexpectedly improved properties or properties that the prior art does not possess. *In re Dillion*, 16 U.S.P.Q. 1897, 1901 (Fed. Cir. 1990).

Applicants maintain that a *prima facie* case of obviousness has not been established. However, the comparative data filed with the Lindahl Declaration rebuts any *prima facie* case of obviousness. The Examiner's attention is respectfully directed to the enclosed Declaration submitted under 37 CFR §1.132.

As declared in paragraph 5, Conlee describes a treatment designed to be applied to one side of a leaf, in essence, exposing only one side of the microfiber. In contrast, the present device is preferably hung in the foraging habitat of a house fly, and is available to the house fly regardless of its approach or chosen landing site.

In addition, as set forth in paragraph 8 in the Lindahl Declaration, in the present invention, an un-baited part of the present device comes into contact with the handler, while, for example, being placed at the site to be treated. The present invention minimizes human contact while handling, and at the same time, presents baited landing surfaces to the fly from all directions.

Moreover, as shown in Table 1 (Exhibit 2), the inventive design was unexpectedly superior in percent (%) reduction of flies. After 19.5 hours, the inventive design resulted in 58.8 % kill, whereas the flat design resulted in 33.6 % kill. The increase in kill is attributable solely to the change from a flat to a tubular design having a longitudinal groove

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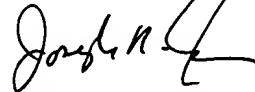
Thus, the insect bait station as presently claimed produces unexpectedly improved properties in killing flies. These unexpected advantageous properties represent objective evidence sufficient to rebut a *prima facie* case of obviousness. Accordingly, the Examiner is respectfully requested to withdraw the 35 U.S.C. §103(a) rejection.

V. CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



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Version with markings to show changes made

Please add new claim 35:

35. (New) An insect bait station for killing *Musca domestica*, said station comprising:

a cylindrical body having an external surface oriented generally vertically, said external surface comprising at least one groove configured to support a pesticide of a viscous liquid or solid formulation so that said pesticide is exposed to said external surface of said body, wherein said pesticide is a member selected from the group consisting of a nitromethylene and a phenyl pyrazole; and wherein said external surface of said body provides one or more edges for insects to land on or near said pesticide.



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APPENDIX

- 1 1. (Twice Amended) An insect bait station for attracting and killing an
2 insect, said insect station comprising:
3 a body having an external longitudinal groove for supporting a self-adhering
4 pesticide.
- 1 2. (As filed) The insect bait station according to claim 1, wherein said body is
2 cylindrical or sperical.
- 1 3. (As filed) The insect bait station according to claim 2, wherein said body
2 comprises a cylinder.
- 1 4. (As filed) The insect bait station according to claim 3, wherein said groove is
2 elongated.
- 1 5. Canceled.
- 1 6. Canceled.
- 1 7. (As filed) The insect bait station according to claim 4, wherein the height of
2 said groove is at least two times larger than the width of said groove.
- 1 8. (As filed) The insect bait station according to claim 3, wherein said body has a
2 plurality of grooves.
- 1 9. (As filed) The insect bait station according to claim 3, wherein said cylinder
2 has a diameter of between about $\frac{1}{4}$ inch to about 2 inches.
- 1 10. (As filed) The insect bait station according to claim 3, wherein said cylinder is
2 between about 6 inches to about 18 inches in length.
- 1 11. Canceled.

1 12. (As filed) The insect bait station according to claim 1, further comprising a
2 hanger member connected to said body.

1 13. (As filed) The insect bait station according to claim 1, wherein said body is
2 extrusion molded.

1 14. (As filed) The insect bait station according to claim 1, wherein said body is
2 injected molded.

1 15. (As filed) The insect bait station according to claim 3, further comprising a
2 pesticide disposed in the external groove wherein said pesticide is a viscous liquid or solid
3 formulation.

1 16. (As filed) The insect bait station according to claim 15, wherein said pesticide
2 is a fast acting insecticide.

1 17. (As filed) The insect bait station according to claim 15, wherein said pesticide
2 is a member selected from the group consisting of nitromethylene and phenyl pyrazole.

1 18. (As filed) The insect bait station according to claim 15, wherein said pesticide
2 sticks to said body under the force of gravity.

1 19. (As filed) The insect bait station according to claim 17, wherein said
2 insecticide is a fast acting insecticide.

1 20. (As filed) The insect bait station according to claim 1, further comprising a
2 pest attractant reservoir connected to said body.

1 21. (Once Amended) The insect bait station according to claim 20, wherein
2 said body has a top portion and a bottom portion, said pest attractant reservoir being affixed to
3 said bottom portion.

1 22. (As filed) The insect bait station according to claim 20, wherein said pest
2 attractant reservoir being affixed to said hanger member.

1 23. (As filed) The insect bait station according to claim 20, wherein said pest
2 attractant is an insect pheromone.

1 24. (As filed) The insect bait station according to claim 20, wherein said pest
2 attractant is a feeding attractant.

1 25. (As filed)The insect bait station according to claim 1, further comprising a
2 cylinder sheath.

1 26. (As filed) The insect bait station according to claim 1, wherein said pesticide
2 is formulated to kill *Musca domestica*.

1 27. (As filed) An insect bait station for killing *Musca domestica*, said station
2 comprising:
3 a body having an external surface oriented generally vertically, said external
4 surface comprising at least one groove configured to support a pesticide of a viscous liquid or
5 solid formulation so that said pesticide is exposed to said external surface of said body.

1 28. (As filed) The insect bait station according to claim 27, wherein said external
2 surface of said body comprises a plurality of generally vertical grooves.

1 29. (As filed)The insect bait station according to claim 27, wherein said body is
2 generally cylindrical.

1 30. (As filed)The insect bait station according to claim 27, wherein said at least
2 one groove covers an area of the external surface equal to at least about 30% of the total area of
3 said external surface.

1 31. (Amended) An insect bait station comprising:

2 a body including a continuous external surface having at least one external
3 longitudinal groove for supporting a pesticide, said at least one external longitudinal groove
4 exposing said pesticide to said external surface of said body and providing one or more edges for
5 insects to land on or near said pesticide.

1 32. The insect bait station according to claim 31, wherein said body is
2 generally cylindrical.

1 33. (Amended) A method for killing an insect, said method comprising:
2 providing a station body having at least one external longitudinal groove on an
3 external surface to provide one or more edges for said insect to land; and
4 applying a self-adhering pesticide on said external longitudinal groove to expose
5 said pesticide to said external surface and place said pesticide at or near said one or more edges.

6 34. The method according to claim 33, wherein said insect is a fly.

1 35. (New) An insect bait station for killing *Musca domestica*, said station
2 comprising:

3 a cylindrical body having an external surface oriented generally vertically, said
4 external surface comprising at least one groove configured to support a pesticide of a viscous
5 liquid or solid formulation so that said pesticide is exposed to said external surface of said body,
6 wherein said pesticide is a member selected from the group consisting of a nitromethylene and a
7 phenyl pyrazole; and wherein said external surface of said body provides one or more edges for
8 insects to land on or near said pesticide.